

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

D.R., AS A MINOR THROUGH
PARENT AND NEXT FRIEND
DAWN RICHARDSON, ET AL.,

Plaintiffs,

HON. ARTHUR J. TARNOW
No. 16-CV-13694

MICHIGAN DEPARTMENT OF EDUCATION,
GENESEE INTERMEDIATE SCHOOL
DISTRICT and FLINT COMMUNITY
SCHOOLS,

Defendants.

PROPOSED CLASS SETTLEMENT HEARING
(Held Via Videoconference)

BEFORE UNITED STATES DISTRICT JUDGE ARTHUR J. TARNOW
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Monday, April 12, 2021
2:31 p.m.

APPEARANCES:

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(Appearances continued)

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TABLE OF CONTENTS

	<u>Proceeding</u>	<u>Page</u>
1		
2	Proposed class settlement hearing	4
3		
4		
5		
6	<u>Exhibits:</u>	<u>Received</u>
7	(None offered.)	
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

4 (Court and Counsel present; 2:31 p.m.)

5 THE COURT CLERK: Now calling the case of DR,
6 et al. v. Michigan Department of Education, et al.; the
7 Honorable Arthur J. Tarnow presiding.

8 Counsel, please make your appearances for the record.

9 MR. LITTLE: Gregory Little for the Education Law
10 Center on behalf of the children of Flint.

11 MS. HECK: Lindsay Heck from White & Case on behalf of
12 the children of Flint.

13 MS. TOTTEN: Kristen Totten of the ACLU of Michigan
14 on behalf of the children of Flint.

15 MR. KOROBKIN: Dan Korobkin also from the ACLU of
16 Michigan on behalf of the children of Flint.

17 THE COURT: Okay. Anyone here for the defense?

18 MR. DONALD MILLER: Yes, Your Honor. Donald Miller on
19 behalf of the Flint Community Schools.

20 THE COURT: Okay.

21 MR. COMSTOCK: For the State of Michigan, Michigan
22 Department Of Education, Assistant Attorney General Travis
23 Comstock and my colleague, Elizabeth Briggs.

24 MR. KUHL: Richard Kuhl, also for the Michigan
25 Department of Education

PROPOSED CLASS SETTLEMENT

1 MR. JOHN MILLER: And good afternoon, Judge. John
2 Miller on behalf of the Genesee Intermediate School District.

3 THE COURT: Okay. Everyone is welcome. Good
4 afternoon.

5 MR. LITTLE: Good afternoon, Your Honor.

6 THE COURT: [Indiscernible due to crosstalk] for the
7 purpose of ratifying the settlement. First of all, does anyone
8 know of any objections that have been filed?

9 MR. LITTLE: The plaintiffs are unaware of any
10 objections, Your Honor.

11 THE COURT: Defense? Do you know of any?

12 MR. DONALD MILLER: No, Your Honor.

13 THE COURT: Nor do I. So how do you want to proceed?

14 MR. LITTLE: Your Honor, I think we can be very brief.
15 Miss Heck and I have divided this up. I'm going to talk in
16 more general terms and then she will go into some more details
17 and point out that there are a couple of contingencies.

18 THE COURT: Stop. While your voice is very
19 distinctive, I'm sure the court reporter may not know who you
20 are, so begin again by identifying yourself.

21 MR. LITTLE: I apologize. My name is Gregory Little.
22 I'm with the Education Law Center on behalf of the children of
23 Flint.

24 THE COURT: Okay. Now --

25 MR. LITTLE: Yes.

PROPOSED CLASS SETTLEMENT

1 THE COURT: -- what do you have to say, Mr. Little?

2 MR. LITTLE: Well, Your Honor, for the last four years
3 we've started these hearings with the plaintiffs saying we are
4 here on behalf of the children of Flint and then we turn to the
5 defendants, and I'm very pleased today and very comfortable in
6 saying that all of us are here today on behalf of the children
7 of Flint, and that's why I don't believe there are any
8 objections to this settlement.

9 I think the defendants and the plaintiffs over the
10 past four years, it's been a very hard fought litigation, but I
11 will say on behalf of the plaintiff we have nothing but utmost
12 respect for counsel for the defendants, and over the course of
13 the past year we have worked very diligently to come up with a
14 resolution that would satisfy everyone's concerns and would
15 also go a long way towards addressing the problems that we felt
16 needed to be raised from the very beginning. And I'm very
17 pleased to announce today that we think we have more than
18 addressed the three issues that caused this concern, but we
19 think with this settlement we will be exceeding the
20 expectations of what is needed to address those issues.

21 And just as a reminder, there were three primary
22 issues that we felt needed to be addressed. Number one, there
23 needed to be a universal screening process to identify those
24 kids who needed help as a result of the lead in the water.
25 Number two, once we identified these kids, we needed to have

PROPOSED CLASS SETTLEMENT

1 programs and resources available to actually treat the issues
2 that were caused by the lead. And number three, we were
3 looking to have a situation where children who had needs were
4 not being automatically subjected to discipline as opposed to
5 addressing those needs. And with the settlement that we have
6 reached an agreement on, we believe we addressed all three of
7 those, and not only are we going to provide a better future for
8 these children in Flint, we think in a lot of ways this
9 resolution is going to be a model across the country for how
10 you deal with urban school districts that are confronted with
11 lead problems.

12 And, again, I just want to express our deep
13 appreciation to the State, to the County and to the Flint
14 Community Schools for the hard work that they put into this as
15 well, and I think over the course of the next -- well,
16 immediately we're going to see significant benefits, but we
17 think long term we're going to see even more benefits as a
18 result of this very unique, very ground-breaking settlement.

19 And with that I would like to introduce the Court -- I
20 don't believe Miss Heck has had the good fortune to appear
21 before Your Honor, but she is the lead trial counsel for
22 White & Case, has been on this case from the very beginning,
23 and since this may well be our last opportunity to be before
24 you, I think very appropriate that she wraps it up for us on
25 the plaintiffs' side.

PROPOSED CLASS SETTLEMENT

1 THE COURT: Before she starts, I appreciate your
2 recognizing the joint effort not only from your co-counsel but
3 from the attorneys and the parties on the other side. The one
4 person you did not mention who --

5 MR. LITTLE: Can I call a time-out, Your Honor? Can I
6 call a time-out? Let me try to make up for it. I know where
7 you're going, and that's an error on my part.

8 THE COURT: Wait, wait. You're the first person in my
9 life who knows where I'm going.

10 MR. LITTLE: It is with deep, deep appreciation that
11 we also want to give our gratitude to Magistrate Patti. He was
12 incredibly helpful from the very beginning. There were
13 literally moments where people were getting up ready to walk
14 out of the room and it was because of his good judgment and his
15 leadership that we were able to pull this together, and he
16 pointed us in the right direction and we do so greatly
17 appreciate it. And accept my apologies for forgetting to
18 mention that on the front.

19 THE COURT: Well, before we hear from your partner, I
20 have a background in criminal defense work, and I'm very
21 familiar with the expression or phrase good cop/bad cop.
22 Judge Patti was the good cop, and I talked to him enough to be
23 informed of the ups and downs. And I encouraged him to refer
24 to me as the bad cop, that if you guys couldn't work it out;
25 you have to come back and see me. And I like the role because

PROPOSED CLASS SETTLEMENT

1 I didn't have to do any work; he did all the work.

2 MR. LITTLE: It was a very effective threat, Your
3 Honor. It was a very effective threat.

4 THE COURT: Counsel, you may begin.

5 MS. HECK: Thank you. Good afternoon, Your Honor.

6 I'm going to attempt to share my screen because, as
7 you know, we have in the past presented in person with poster
8 boards as we've reached settlements, and so we have one slide
9 that sets forth the various aspects of the settlement that we
10 are here and proposing to the Court to approve today.

11 This settlement agreement that all of the parties have
12 come together and reached really does two things. It, first,
13 will funnel substantial resources into Flint Community Schools
14 and other districts with impacted students, and it will also
15 lead to and precipitate structural changes.

16 With respect to the increased resources, the State of
17 Michigan will contribute at least \$9 million to establish the
18 Flint Water Crisis Special Education Fund which will be known
19 as the SEF. It will be used to strengthen the special
20 education supports and services that children receive at
21 school. The settlement strikes a very delicate balance between
22 funneling resources into Flint Community Schools as well as the
23 other districts in Genesee County that some of the class
24 members have transferred to and that they now attend. There
25 will be quarterly reports and biennial audits tracking how the

PROPOSED CLASS SETTLEMENT

1 funds are distributed. And upon final disbursement of the SEF
2 funds, there will be a final report which will assess the
3 effectiveness of those funded services in addressing the needs
4 of eligible students and which will also set forth nonbinding
5 recommendations as to whether the services provided through the
6 SEF shall continue.

7 The Genesee Intermediate School District will also
8 provide supplemental assistance to Flint Community Schools and
9 other districts impacted by the Flint water crisis including
10 \$1 million for county-wide special education transportation and
11 \$1.2 million in staff and services for FCS schools.

12 This support will notably continue into the future
13 with the Genesee Intermediate School District committing to
14 work with Flint Community Schools in good faith with future --
15 to assist with future staffing needs and filling critical
16 vacancies as Flint Community Schools has historically faced
17 chronic challenges in attracting and retaining talent.

18 Finally, the Genesee Intermediate School District will
19 provide professional investment and training in special
20 education to teachers and staff at Flint Community Schools and
21 it will also provide behavioral interventions and support for
22 services. One of the benefits of the settlement agreement is
23 that it does call for collaboration between Flint Community
24 Schools and Genesee Intermediate School District, thereby
25 helping to promote and bolster a productive, cooperative

PROPOSED CLASS SETTLEMENT

1 working relationship between these two parties that will serve
2 both on a going-forward basis.

3 With respect to the structural changes that the
4 settlement agreement contemplates, we start with a
5 comprehensive assessment that the Genesee Intermediate School
6 District will undertake to assess preschool programs, and the
7 intention is to ensure the delivery of high quality
8 developmentally appropriate universal preschool programs for
9 all of the three and four year olds in Flint. The assessment
10 will review resources that are necessary to bring all existing
11 programs up to high quality standards and it will also make
12 recommendations as to how to reduce barriers to assets. This
13 is important because for children with special education needs,
14 as well as children who have been exposed to lead, a focus on
15 early childhood development is critical. The earlier that
16 interventions are provided, the better for these children.

17 Secondly, the Genesee Intermediate School District
18 will review and make necessary modifications to the county-wide
19 special education program plan which has not been updated since
20 the Flint water crisis. The plan will be revised with
21 community input to ensure the effective delivery of special
22 education and related services to all students qualifying for
23 special education in Genesee County.

24 Finally, consistent with this, the Genesee
25 Intermediate School District will pursue a county-wide tax

PROPOSED CLASS SETTLEMENT

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1 increase for special education-related services. Under the
2 settlement agreement, it will develop a plan to explain to the
3 voters the need for the increase and will use its best efforts
4 to secure voter approval of the tax increase.

5 At this juncture we would be happy to take any
6 questions from the Court or to review the factors that the
7 Court must consider under Federal Rule of Civil
8 Procedure 23(e)(2) in determining whether the settlement is
9 fair, reasonable and adequate.

10 THE COURT: First question is does anybody have
11 anything to add or object to?

12 MR. KUHL: Your Honor, this is Richard Kuhl from the
13 Michigan Department of Education. I think one important factor
14 about the settlement that needs to be emphasized and brought to
15 your attention, which is that the settlement is contingent upon
16 the finalization of the overall Flint settlement that's pending
17 in front of Judge Levy. I just didn't want that to go unnoticed.
18 She, Judge Levy, has set that settlement for fairness hearing
19 on July 12th, I believe it is, and so that won't take place
20 until later of the year. So I thought it was important to make
21 sure that that was brought to your attention.

22 THE COURT: Okay. What's the date of Judge Levy's
23 hearing?

24 MR. KUHL: July 12th.

25 MS. HECK: Your Honor, we would like to take a moment,

1 if possible, to discuss the logistics of approving this
2 settlement for the reasons that Mr. Kuhl mentioned, that it is
3 contingent upon approval of the global settlement which is
4 scheduled for the fairness hearing exactly three months from
5 today, on July 12th. And our suggestion is that we would like
6 the parties to submit two proposed orders to the Court. The
7 first, which could be entered at any time by the Court, will
8 state that the settlement agreement is approved noting that the
9 settlement agreement will only become final upon approval of
10 the global settlement agreement in the *In Re Flint Water* cases
11 pending before Judge Levy. And then the second proposed order,
12 which will be submitted to the Court after approval of the
13 larger global settlement, would be for the Court to dismiss the
14 case with prejudice retaining jurisdiction only for the
15 purposes of enforcing the settlement agreement.

16 THE COURT: Any objection to that method of
17 proceeding? From the defendants, nothing?

18 MR. KUHL: No, Your Honor.

19 THE COURT: Okay. Is there anything either side wants
20 me to put on the record in terms of the findings under Federal
21 Rule of Civil Procedure 23(e) to supplement my prior ruling
22 indicating that I approved the proceeding of the class as it
23 was then? In other words, has anything changed?

PROPOSED CLASS SETTLEMENT

1 THE COURT: Okay. Well, if it's not sufficient, I
2 will incorporate it by reference right now.

3 Is there anything else procedurally that I should be
4 doing other than accept the proposal that -- I might use
5 different language, but taking the motion under advisement with
6 an indication that I'm approving the settlement subject to the
7 rulings in Judge Levy's case. Is that what plaintiff wants?

8 MR. LITTLE: Yes, Your Honor.

9 THE COURT: Okay. And defendant is okay with that?

10 MR. COMSTOCK: Yes, Your Honor.

11 THE COURT: Okay. I'll ask the question again. Is
12 there anything else that I should be addressing at this time
13 before if we take the posture of just waiting to see
14 Judge Levy's decision?

15 I cannot express my gratitude to all of you, not
16 because it takes a case off my docket, because I learned a long
17 time ago I don't get a bonus for closing cases; not because my
18 at least one law clerk is relieved; but in a positive way what
19 you have done and you've described as, if not the first, a
20 leading method of dealing with the water situation in many
21 other jurisdictions besides Flint. The -- I won't call it a
22 silver lining, but this would not have gotten done without the
23 tragedy and the stupidity of the switching systems way back
24 when. But at least you folks working together have made the
25 best of it.

PROPOSED CLASS SETTLEMENT

1 It's remedial which by definition means there's a
2 problem, serious problem, that you're addressing that should
3 never have happened, but once it happened, you guys should all
4 be proud of your law school education and, more importantly,
5 your willingness to work, and I -- my memory is long enough, so
6 I know perhaps a very difficult part of each of your
7 representation is dealing with your clients and their
8 expectations and their values. And I know that the State and
9 governments are traditionally short of money and try and save
10 on resources. And the ability to get all of the government
11 entities to reach what we are all recognizing is a reasonable
12 result and more than, according to plaintiff attorney, the
13 original expectations is a tribute to all of you and a tribute
14 to Judge Patti who did a lot of the work necessary for you guys
15 to be able to talk to your clients and reach this result. And
16 I thank you all.

17 If there's nothing else, I think we're done.

18 MR. LITTLE: Well, I think I can speak for everyone,
19 Your Honor. We also thank you. This has been quite an
20 experience. And we greatly appreciate the opportunity to have
21 been before you on this. Thank you very much.

22 THE COURT: Well, just remember that on April 15th
23 when you pay my pension.

24 MR. LITTLE: Will do, Your Honor. Will do.

25 THE COURT: We're done. Thank you all.

PROPOSED CLASS SETTLEMENT

1 MR. LITTLE: Thank you.

2 MR. KOROBKIN: Thank you, Your Honor.

3 (Proceedings concluded, 2:52 p.m.)

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5 CERTIFICATION OF REPORTER

6

7 I, Leann S. Lizza, do hereby certify that the above-entitled
8 matter was taken before me remotely via videoconference at the
9 time and place hereinbefore set forth; that the proceedings
10 were duly recorded by me stenographically and reduced to
11 computer transcription; that this is a true, full and correct
12 transcript of my stenographic notes so taken; and that I am not
13 related to, nor of counsel to either party, nor interested in
14 the event of this cause.

15

16

17 S/Leann S. Lizza

8-25-2023

18 Leann S. Lizza, CSR-3746, RPR, CRR, RMR, RDR Date

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